

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
NORTH CROSS CEDAR, INC.)

Appellant,)

v.)

NORHTWEST AIR)
POLLUTION CONTROL)
AUTHORITY,)

Respondent.)

PCHB No. 79-124

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of Notice of Violation No. 932 and the
Notice of Imposition of Penalty of \$100 for the alleged violation of
Section 501 of respondent's regulation and of WAC 173-425-075 having
come on regularly for formal hearing on the 27th day of November, 1979
in Mount Vernon, Washington, and appellant, North Cross Cedar, Inc.,
appearing through its owner, Larry Russell and respondent, Northwest
Air Pollution Control Authority, appearing through its attorney,
Kenneth J. Evans; and Board member present at the hearing being Chris
Smith with Nancy E. Curington, hearing officer presiding, and the

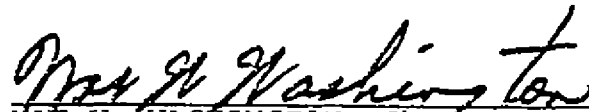
1 Board having considered the exhibits, records and files herein, and
2 having reviewed the Proposed Order of the presiding officer mailed to
3 the parties on the 21st day of December, 1979, and more than twenty
4 days having elapsed from said service; and

5 The Board having received no exceptions to said Proposed Order and
6 the Board being fully advised in the premises; NOW THEREFORE,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
8 Order containing Findings of Fact, Conclusions of Law and Order dated
9 the 21st day of December, 1979, and incorporated by reference herein
10 and attached hereto as Exhibit A, are adopted and hereby entered as
11 the Board's Final Findings of Fact, Conclusions of Law and Order
12 herein.

13 DATED this 30th day of January, 1980.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 NAT W. WASHINGTON, Chairman

17 
18 CHRIS SMITH, Member

19 
20 DAVID AKANA, Member

CERTIFICATION OF MAILING

I, Trish Ryan, certify that I mailed, postage prepaid, copies of the foregoing document on the 30th day of January, 1980, to each of the following parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Larry Russell
North Cross Cedar, Inc.
Box 1338
Lyman, WA 98263

Kenneth J. Evans
Attorney at Law
815 Cleveland
Mount Vernon, WA 98273

Northwest Air Pollution Authority
207 Pioneer Building
Mount Vernon, WA 98273

Trish Ryan
TRISH RYAN
Docket Clerk

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
NORTH CROSS CEDAR, INC.,)
Appellant,)
v.)
NORTHWEST AIR POLLUTION)
AUTHORITY,)
Respondent.)

PCHB No. 79-124

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of Notice of Violation No. 932 and the Notice of Imposition of Penalty of \$100 for the alleged violation of Section 501 of respondent's regulation and of WAC 173-425-075, came on for formal hearing before the Pollution Control Hearings Board in Mount Vernon, Washington, on November 27, 1979. Present for the Board was Chris Smith, member. Nancy E. Curington presided.

Appellant was represented by its owner, Larry Russell.
Respondent was represented by its attorney, Kenneth J. Evans.

Having heard the testimony, having examined the exhibits, and

EXHIBIT A

1 having considered the contentions of the parties, the Board makes
2 these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board
6 a certified copy of its regulations and amendments thereto, which
7 are noticed.

8 II

9 On June 28, 1979 at about 9:00 a.m., respondent's inspector
10 visited appellant's site after observing smoke emanating from
11 appellant's woodwaste burner. He noted smoldering woodwaste on the
12 ground at the base of the burner and under the conveyor carrying
13 woodwaste into the burner. He estimated there was a couple of cubic
14 yards of smoldering material. He noted that the sprinkler system at
15 the top of the woodwaste burner was not functioning at the time.
16 The inspector spoke with Larry Russell, owner, and issued Notice of
17 Violation No. 932, for violation of Section 501 of respondent's
18 Regulations and WAC 173-425-075. A Notice of Imposition of Penalty
19 for \$100 was mailed by certified mail to appellant on July 10, 1979.

20 III

21 Appellant has a permit from respondent which allows him to burn
22 woodwaste within the burner and has no other permit. Respondent has
23 not previously taken any enforcement action against appellant,
24 although appellant had previously received verbal warnings about a
25 different air pollution problem. Appellant has an extra employee
26 during the hot summer months, whose sole duty is to watch for and

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 extinguish "spot fires". At the base of the burner the appellant
2 had water hoses and buckets of water for use in controlling the spot
3 fires.

4 IV

5 Respondent's regulations prohibit outdoor fires for the disposal
6 of combustible rubbish without respondent's written permission or
7 written permission of another governmental agency having
8 jurisdiction over such fires. (Section 501.34).

9 V

10 Any Conclusion of Law which should be deemed a Finding of Fact
11 is hereby adopted as such.

12 From these Findings the Board makes these

13 CONCLUSIONS OF LAW

14 I

15 Since appellant had no permit to burn woodwaste other than
16 within the woodwaste burner, appellant violated both Section 501 of
17 respondent's Regulations and WAC 173-425-075(2).

18 II

19 Although appellant took precautions to prevent the occurrence of
20 "spot fires", the violation of respondent's Regulations and WAC
21 173-425-075(2) occurred and cannot be excused. In view of the
22 appellant's efforts, however, the \$100 penalty should be affirmed
23 with \$50 suspended on the condition that appellant not violate
24 respondent's Regulations for a period of one year after this Order
25 becomes final.

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

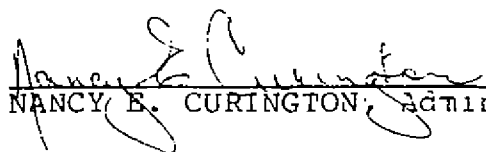
From these Conclusions the Board issues this

ORDER

The \$100 civil penalty is affirmed, provided, however, that \$50 of the civil penalty is suspended on the condition that appellant not violate respondent's Regulations for a period of one year after this Order becomes final.

DATED this 21st day of December, 1979.

POLLUTION CONTROL HEARINGS BOARD


NANCY E. CURINGTON, Administrator